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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,479	07/09/2001	Dane J. Hoechst	018470-9053-00	5170
23409	7590	12/30/2003	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			YEAGLEY, DANIEL S	
		ART UNIT	PAPER NUMBER	
		3611		

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)	<i>SW</i>
	09/901,479	HOECHST ET AL.	
	Examiner Daniel Yeagley	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 17 October 2003.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 - 4, 6, 8 - 10, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 in view of Belil Creixell '078.

Chambers shows a motorcycle comprising a frame 20, engine transmission assembly mounted to the frame having a drive sprocket (not shown) mounted to an output shaft 30c (figure 5), a rear wheel sprocket 13 mounted to a rear wheel 58 and mounted to a swing arm 52 having a pivot member 23 interconnecting the swing arm for pivotally mounting the swing arm to at least one of a frame and engine transmission assembly for pivotal movement within a range of motion (figure 9), such that the pivot axis of the drive sprocket and the pivot axis of the swing arm are non-collinear, and includes a flexible drive member 11 (drive belt) having an upper extent extending between the upper portions of the drive sprocket and wheel sprocket and a lower extent extending between the lower portions of the drive sprocket and the rear wheel sprocket, which includes a tensioner (not numbered) comprising a bracket and a roller and which encompasses a method such that the tensioner is fixed to at least one of a frame and engine transmission assembly and having a belt path length defined by the drive sprocket, the rear wheel sprocket and the tensioner which remains substantially constant as the swing arm pivots which clearly shows the lower extent of the drive belt remaining in contact with the tensioner as the

swing arm pivots through a range of motion but failed to disclose the tensioner being fixed to at least one of a frame and engine transmission assembly against both pivotal and translational movement with respect to the output shaft as understood.

Belil Creixell clearly shows in figure 6, a tensioner 26 that includes a bracket fixed to at least one of the frame and having a roller element mounted for rotation to the bracket and in contact with a side (bottom side) of the lower extent of the flexible drive member, wherein the tensioner is coupled to the frame against both pivotal and translational movement with respect to an output shaft of the engine/transmission assembly such that the tensioner would maintain contact with the side of the lower extent of the drive member as the swing arm pivots through a range of motion as now claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the flexible drive assembly of Chambers motorcycle with a fixed tensioner coupled to the frame, such as shown by Belil Creixell that remains in contact with the flexible drive member in order to prevent slack and slipping in the drive member when the swing arm pivots through its range of motion as is well known and old in the belt tensioning art to retain tension on the belt for greater reliability and longer life of the flexible drive member.

3. Claim 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 as modified by Belil Creixell, as applied to claim 1 above, and in further view of Hatsuyama '069.

Chambers as modified by Belil Creixell shows a swing arm pivotally mounted to the engine/transmission assembly and the frame but failed to show the swing arm pivotally mounted

to only an engine transmission assembly. Hatsuyama shows a motorcycle having an engine transmission assembly mounted to the frame, which clearly shows the prior art of a swing arm, mounted only to the engine transmission assembly as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the swing arm of the Chambers as modified by Belil Creixell motorcycle by alternatively mounting the swing arm to another component such as the engine transmission assembly as taught by the Hatsuyama swing arm assembly, as an alternative location for mounting the swing arm for pivotal motion of the rear wheel assembly based upon user choice of an alternate frame structure where no frame is available to mount the swing arm to the motorcycle.

4. Claim 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 as modified by Belil Creixell as applied to claim 1 above, and in further view of Bernard '216.

Chambers as modified by Belil Creixell clearly shows a tensioner fixedly mounted to the frame and contacts the lower extent of the drive member but failed to show the tensioner fixed only to the engine transmission assembly. Bernard shows a motorcycle having an engine transmission assembly mounted to the frame, which clearly shows the prior art of a belt tensioner mounted only to the engine transmission assembly as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the tensioner of the Chambers as modified by Belil Creixell motorcycle to alternately replace the tensioner on the frame with a belt tensioner mounted to the

engine transmission assembly such as taught by Bernard belt tension means simply as an alternative location for mounting the tensioner to engage the belt for removing slack and retaining tension in a drive belt based upon structural limitations of the motorcycle components.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-15 filed 10/17/03 has been considered but are moot in view of the new ground(s) of rejection as now claimed; wherein Chambers clearly discloses the prior art of a belt tensioner mounted to the frame and engine transmission assembly of a motorcycle that contacts a lower extent of a flexible drive member and as further obviously clearly shown by the earlier cited art reference of Belil Creixell who distinctively shows the tensioner fixed to the frame against both pivotal and translational movement with respect to an output shaft, such that the tensioner of Belil Creixell is clearly conceivably maintained in contact with the side of the lower extent of the drive member as the swing arm pivots through a range of motion as now claimed, because the swing arm would have to swing well beyond its intended limit of the rear fender components of the motorcycle before the side of the lower extent would feasibly disengaged from the tensioner.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3611

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.Y.  
December 15, 2003

  
LESLEY D. MORRIS  
SUPERVISORY PATENT EXAMINER  
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